

in size. Even so, the Gulf-based carriers would have to file Phase II unserved area applications for those areas, subject to competing applications. Thus, the Commission's Coastal Zone proposal takes away from the Gulf CTS carriers part of the GMSA and freezes them into their current coverage of the Coastal Zone, subject to their continued coverage.

Thus, instead of freezing Gulf carriers into their currently served areas - a proposition that the Court found so troublesome - the Commission now proposes to freeze Gulf carriers into their currently served areas *within a twelve nautical mile span from the coastline* and extending into the Gulf. This proposition is more than likely to be equally troublesome to the Court. The Court's concern was expressed as follows:

The consequences of the Commission's new rule for Gulf licensees appear to be dire. Limited as they are to water-borne transmitters, petitioners go only where oil and gas sites permit. The new rule freezes petitioners' service areas at the status quo. When oil and gas rigs are deactivated, petitioners must close up shop. If new rigs do not open within reasonable proximity to the old, petitioners effectively lose the ability to serve part or all of their service areas.⁵⁷

All that the Commission has now proposed is that the Gulf Carriers be frozen into whatever coverage they presently have in the so-called Coastal Zone - an area that the Commission states has significant unmet demand for cellular service. The fact that the Commission proposes to freeze the Gulf carriers' service area into part of the Gulf instead of the entire Gulf does not even address the Court's obvious concern. Accordingly, the Commission's efforts to find consistency with the Court's directive by focusing on its proposal to maintain the current ability

⁵⁷Id.

of the Gulf carriers to expand and contract their service **within** the Exclusive Zone is misplaced. It is the Commission's proposed creation and treatment of the Coastal Zone that disregards the Court's remand.

Moreover, the Commission's proposal is much more extreme and much more troublesome than the Commission's earlier, remanded decision. Beyond freezing the Gulf CTS carriers into their status quo coverage of the Coastal Zone, the Commission's proposal virtually guarantees that over time Gulf CTS carriers will lose all Coastal Zone coverage and that the area will be served by the land-based carriers in the adjacent cellular markets.

Under the Commission's proposal, any currently served area within the Coastal Zone that is reduced or eliminated, even if due to the move or deactivation of a drilling platform on which the serving cell site was located, will be lost to the Gulf carrier. At that point, the affected area would be deemed "unserved" and made subject to the Commission's Phase II unserved area application and licensing procedures. Clearly, the inability of an existing Gulf-based CTS carrier to serve the affected area from other waterborne "locations," i.e., oil platforms, also means that there are no such "locations" for any other potential Gulf-based applicant. Thus, the only possible applicant that could serve the "unserved" area would be the CTS licensee in an MSA or RSA adjacent to the Gulf, since only that applicant is positioned to provide coverage from a land-based cell site.

While this part of the proposal would also apply to coverage of the Coastal Zone by land-based CTS carriers, the effect on them is nominal since their coverage of that area is not at the mercy of oil platforms. As a result, under the Commission's proposal, the existing

coverage of the Coastal Zone by the Gulf-based carriers will diminish, while the existing coverage of the Coastal Zone by the land-based carriers will expand. This aspect of the proposal fails to take into account the Court's express sensitivity to the very unique characteristics of the Gulf and, accordingly, the needs of the CTS carriers licensed by the Commission to serve the Gulf. As such, the Commission's proposal appears to be a proposition even more dire than the one originally proposed by the Commission.

In its remand order, the Court held that the Commission's treatment of the issues raised by the Gulf carriers, *i.e.*, the "total dependence on the location of oil and gas platforms, remote equipment sites, fluctuating service areas, and attendant high costs" had been "vexingly terse."⁵⁸ Much as it did in its *Further Notice of Proposed Rulemaking*, in its *Notice* the Commission summarily dismisses the issues related to the special circumstances of Gulf carriers. The Commission recognizes that its proposal will "impose some hardship on licensees with transmitters on temporary platforms that are relocated through no fault of their own."⁵⁹ Nonetheless, the Commission believes its proposal to be justified by "the public interest in ensuring reliable cellular service throughout the Coastal Zone outweighs any hardship these carriers may experience."⁶⁰ While expressing a laudable goal, the Commission mentions and then casts aside the very unique characteristics of cellular service in the Gulf that the Court found so compelling. This alone will undoubtedly trouble the Court.

⁵⁸*Id.* at 1172.

⁵⁹*Notice* at ¶ 44.

⁶⁰*Id.*

Moreover, the Commission is well aware that the net effect of its proposal is to reallocate to the CTS licensees in the land-based markets adjacent to the Gulf that part of the GMSA identified as the Coastal Zone area. First, if deactivation or movement of a rig results in the loss of service to a Coastal Zone area, it is because, at that point in time, there is either no other available platform or rig from which to provide service; a lack of space on other platforms; or a physical or technical inability to provide effective interconnection from any such platform. Second, the only way to serve the "vacated" area within the Coastal Zone is from a land-based transmitter. Third, the land-based carriers have included within their CGSAs virtually all of the coast.⁶¹ Fourth, under the Commission's proposal, Gulf-based carriers must obtain the land-based carrier's consent in order to locate land-based cell sites or to extend SABs into land within the land-based carrier's CGSA.⁶² Fifth, the loss of service to a Coastal Zone area will result in the re-licensing of that area, in accordance with the Phase II unserved area procedures. In view of the foregoing, the land-based carrier has no incentive to provide any Gulf-based carrier with the consent needed to serve from a land-based location the to-be "vacated" area, when it could just as easily file an unserved area application and put up a land-based cell site to serve that area. Indeed, as recognized by the Court, "no land-based licensee has provided such consent to date."⁶³ This situation has continued unabated to date.

⁶¹Id. at ¶ 40.

⁶²Id.; 47 C.F.R. § 22.912.

⁶³Petroleum Communications, Inc. v. FCC, 22 F.3d at 1172 n.8.

In effect, the Commission has proposed to gradually replace Gulf-based service to the Coastal Zone with land-based service, since land-based carriers will be the only cellular providers capable of serving the vacated Coastal Zone areas. This "back-door approach" to having the land-based CTS carriers serve the so-called Coastal Zone is legally flawed in that it attempts to accomplish by misdirection what the Commission cannot lawfully do in a straightforward manner. The Court will find this troublesome as well.

The real effect of the Commission's efforts is reinforced by recent *WCS Report and Order*, where it addressed the WCS license areas for the Gulf as follows:

We determine that land-based license regions abutting the Gulf of Mexico will extend to the limit of the territorial waters of the United States in the Gulf, which is the maritime zone that extends approximately twelve nautical miles from the U.S. baseline. Beyond that line of demarcation, we will create the Gulf of Mexico REAG and MEA, which will extend from that line outward to the broadest geographic limits consistent with international agreements.⁶⁴

This is clearly the Commission's current licensing approach for the Gulf and it is clearly reflected in the Commission's proposal in this proceeding. However, since the Commission cannot, at this point in the progression of cellular licensing, lawfully redefine the MSAs and RSAs adjacent to the Gulf to include the territorial waters of the United States, it has made a proposal whose net effect is to achieve the same objective. As the Gulf-based carriers lose their current coverage in the Coastal Zone through the movement or deactivation of rigs and platforms, those coverage areas will be taken over by land-based carriers in the adjacent markets

⁶⁴Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, GN Docket No. 96-228, *Report and Order*, FCC 97-50, ¶ 59 (rel. February 19, 1997).

since they will be the only entities that will realistically be able to construct and operate the land-based transmitters necessary to serve these "vacated" Coastal Zone areas.

**2. Gulf-Based CTS Carriers Must Be Permitted To
Locate Transmitters On Land Without Consent
Of The Co-Channel Land-Based CTS Licensee.**

The Commission's failure to address the inherent difficulties presented to the Gulf-based CTS carriers that result from the unique characteristics of the Gulf is illustrated by its determination to not allow Gulf-based CTS providers to place any CTS transmitters on land. In this regard, the Commission also presents what it refers to as a change in its policy prohibiting the Gulf-based carriers from placing cell sites on land within the CTS markets adjacent to the Gulf. Specifically, the Commission:

propose[s] to abandon the policy of absolutely prohibiting (without consent) land-based sites for the GMSA carriers, and to provide that only our SAB extension rules should affect the placement of transmitters, whether land-based or water-based.⁶⁵

This proposal is presented as being somehow beneficial to the existing Gulf CTS carriers.⁶⁶

However, upon closer examination, the proposal has no real effect on the current policy.

Initially, the SAB extension rules, contained in Section 22.912, state, in relevant part, that:

(a) De Minimis Extensions.

. . . SABs may extend into adjacent cellular markets if such extensions . . . do not extend into the CGSA of any other licensee's cellular system on the same channel block (**unless the licensee of such other system consents to the extension**) . . .

⁶⁵Notice at ¶ 40 (footnotes omitted).

⁶⁶Id.

(b) Contract Extensions.

. . . licensees of cellular systems on the same channel block in adjacent cellular markets may, at any time, **enter into contracts** with applicants or other licensees to allow SAB extensions into their CGSA only . . . [or] **may agree** to allow SAB extensions into their CGSA and/or unserved areas in their cellular markets during the five year build-out period of the market into which the SAB extends.⁶⁷

In short, the Commission's SAB extension rules require the consent of the adjacent cellular market system licensee for overlapping SAB extensions into its CGSA. Since "nearly the entire coastal area of the Gulf region is within the CGSA of land-based carriers,"⁶⁸ this means that a Gulf-based carrier cannot place a transmitter on land, even one with a highly directionalized antenna array, without having an SAB extension into the land-based carrier's CGSA. Thus, under the SAB extension rules, a Gulf-based carrier's land-based transmitter will be effectively prohibited, absent the affected land-based carrier's consent. It is unclear how the move from a "no transmitter on land without consent" policy to a "transmitter on land only with consent" policy makes any material difference.

Moreover, the policy does not create a level playing field. The Commission has not required land-based carriers to obtain the Gulf-based carrier's consent to encroach into the Gulf while the Gulf-based carrier must receive the land carriers' consent in order to extend into the adjacent land-based markets. Gulf-based carriers, on the other hand, have been blocked from obtaining even de minimis non-consensual extensions into a land-based carrier's CGSA.

⁶⁷47 C.F.R. § 22.912 (emphasis added).

⁶⁸Notice at ¶ 40.

Furthermore, in the case of Coastel, despite the language of the de minimis extension rule that requires consent in order to have an SAB extension into another CTS carriers' CGSA, the B-Block land-based carriers in the markets adjacent to the Gulf currently have considerable nonconsensual extensions into Coastel's CGSA.⁶⁹ Coastel understands that in recent years the Commission has not processed the land-based CTS carriers' applications that propose even de minimis extensions into the Gulf. However, despite the fact that any such extensions into Coastel's CGSA violate Section 22.912, the Commission has allowed the extensions to remain and so long as that remains the case, the damage has already been done. Coastel does not understand how this is equitable. This has been, and will continue to be, a hardship on the Gulf-based CTS operators and an unjust benefit to the land-based CTS operators.

The problem is exacerbated by the creation of a Coastal Zone because land-based carriers cannot be realistically expected to consent to de minimis overlaps of their CGSA in order to allow the Gulf carriers to cover areas of the Coastal Zone that they could just as easily cover themselves. In short, enabling Gulf-based CTS carriers to provide service via land-based transmitters is a hollow gesture, particularly when coupled with the creation of a 12-mile Coastal Zone, from which it would be effectively shut out.

A second major problem with the Commission's "land-based transmitter" proposal is that it is fundamentally unfair to the existing Gulf-based carriers who have sought such transmitters for many years. It is of no benefit to the existing Gulf-based carriers because the

⁶⁹Coastel's CGSA is the entire Gulf. Petroleum Communications, Inc. v. FCC, 22 F.3d at 1168.

placement of a transmitter on the coast of a land-based MSA or RSA (even if the land-based carrier consents to such placement) is useless to the existing Gulf carriers except where they already have complete coverage of the Coastal Zone. In any other situation, the placement of a land-based transmitter by a Gulf carrier would necessarily result in extensions into the Coastal Zone as well as into the CGSA of the affected land-based carrier. Since even de minimis extensions into the Coastal Zone would be prohibited, even the consent of the land-based carrier would not be meaningful.⁷⁰ Given the need for the consent of the affected land-based carrier for the placement of a land-based transmitter and the likelihood that any such land-based transmitter would cause interference problems for the land-based carrier's own service along the coast, this proposal is practically tailored for a situation where the land-based carrier is the Coastal Zone licensee.

In this regard, the Commission refers to "11 Applications for Review filed by Coastel requesting that the Commission reconsider its denial of Coastel's applications for land-based facilities."⁷¹ This reference is incorrect. The applications that were dismissed and are the subject of the long-pending applications for review, propose pier-based transmitter sites that are within the GMSA.⁷² The dismissal of those applications was based solely on the fact that they proposed de minimis SAB extensions into the CGSAs of the affected land-based carriers without the consent of those carriers - a rationale that is inconsistent with the latitude given to

⁷⁰47 C.F.R. § 22.912.

⁷¹Notice at ¶ 57.

⁷²See United States v. California, 447 U.S. 1 (1980).

the land-based carriers to permit de minimis extensions into the GMSA without consent of the Gulf-based operators.⁷³

3. The Commission's Past De Minimis Extension Rules Have Provided A Competitive Advantage To Land-Based CTS Carriers.

The effect of the Commission's past de minimis extension rules have significantly prejudiced the Gulf-based CTS providers by giving an unfair competitive advantage to the adjacent market land-based CTS carriers. It is hollow reasoning to say that the same de minimis extension rules have been applied to both land-based and Gulf-based carriers since the unique characteristics of the Gulf make the effect of applying the same rule a very uneven proposition. Put simply, under the same set of de minimis extension rules, land-based CTS carriers have enjoyed considerable incursions into portions of the coastal Gulf that the Gulf-based CTS carriers have been unable to serve due to the Commission's prohibition against land-based transmitter sites by Gulf-based carriers.⁷⁴ Indeed, the Commission's reaction to this unique aspect of providing Cellular service in the Gulf has been to allow land-based carriers to take advantage

⁷³ See e.g., Letter dated March 15, 1993 from Mr. John Cimko, Chief, Mobile Services Division, Common Carrier Bureau, to Mr. Richard S. Rodin, counsel for RVC Services, Inc. d/b/a Coastel Communications Company, dismissing the application identified under File No. 01602-CL-MP-93.

⁷⁴The parties filing comments on June 2, 1997, are a testament to the considerable nature of the extensions into the Gulf. See, e.g., Comments of Southwestern Bell Telephone Company at 4 (labels the extensions as "significant"); Comments of Palmer Wireless at 10; Vanguard at 3 (¶ 4).

of the Gulf carriers' handicap rather than to focus on assisting the Gulf-based carriers in overcoming the handicap.⁷⁵

These land-based CTS providers were not required to have the consent of Gulf-based CTS providers into whose CGSA they had encroached while the current rules permit the land-based CTS providers to effectively block the Gulf-based CTS providers from more efficiently serving the shallow water areas of the GMSA by stopping them from placing any transmission facilities on land. As a result of those rules, the land-based CTS carriers have made considerable incursions into portions of the GMSA that can only be reached from land-based transmitters in the coastal and near coastal plains to which they have sole access.⁷⁶

4. The Commission's Proposal Of A Uniform Propagation Methodology For SABs Over Water Should Not Be Adopted.

The Commission also proposes to adopt a uniform propagation measurement methodology for SABs over water, whether they originate from a water-based or land-based cell.⁷⁷ Here again, the Commission's proposal is skewed in favor of moving the existing Gulf-based CTS carriers out of the Coastal Zone and replacing them with the licensees of the CTS systems in the markets adjacent to the GMSA. Since it is universally acknowledged that signals

⁷⁵Petroleum Communications, Inc., *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 4085 (CCB 1989) "[U]nder present criteria, for permissible de minimis extensions, it is likely that in the eastern Gulf, which is an area with few fixed platforms . . . larger excursions of 39 dBu contours may be acceptable under the de minimis standard." Id. at ¶ 17.

⁷⁶Notice at ¶ 35.

⁷⁷Id. at ¶ 37.

carry further over water than over land, any uniform methodology adopted will favor land-based carriers. If the current Gulf formula is used for those parts of land-based SABs that are over water, the extensions of the land-based carriers into the Coastal Zone will be greater for purposes of determining whether there are unserved areas. If a different formula is adopted and applied to the Gulf carriers, their extensions into the Coastal Zone will shrink, while those of the land-based carriers will increase.

5. The Commission Must Ensure That Gulf-Based Carriers Are Able To Interconnect With The Land-Based Carriers That Border The Gulf.

Another unique characteristic of the Gulf that must be addressed by the Commission to enable the Gulf-based carriers to more properly serve the Gulf is the fact that there is no local landline telephone exchange carrier in the Gulf with whom the Gulf-based carriers can interconnect. The ability of the Gulf-based carriers to serve the Gulf has been and continues to be handicapped by the refusal of landline telephone companies in the cellular markets adjacent to the Gulf to provide interconnection to the Gulf-based carriers on a transport and termination basis.⁷⁸ These companies insist on treating the Gulf-based carriers as interexchange carriers subject to access charges. Despite the patently incorrect nature of this treatment, the Commission has yet to rule on this issue. As a result, the Gulf-based carriers have been unable to obtain the less expensive, more traditional CMRS/LEC interconnection.

⁷⁸See Petition for Declaratory Ruling filed by BellSouth on March 21, 1994 (File No. MSD 94-13); Complaint and Request for Extraordinary Relief filed by PetroCom on June 17, 1993 (File No. E-93-92).

B. The Commission's Reference To The "Public Interest" Does Not Justify Its Proposal To Bifurcate The Gulf.

The basic concept of dividing the GMSA into a Coastal Zone and an Exclusive Zone is misguided. As the Commission understood early on:

the public interest would best be served if the Gulf were served as a unified area, rather than piecemeal by many different land licensees who might have varying priorities.⁷⁹

In its *Notice*, the Commission offers no evidence to justify a departure from that conclusion.⁸⁰

The Commission also attempts to justify its proposal to create a separate GMSA Coastal Zone by vague reference to the "public interest." For instance, the Commission contends that splitting the GMSA into two zones will "serve the public interest, because the higher volume of cellular traffic in coastal waters justifies a policy that ensures wide-spread, reliable coverage along the shoreline."⁸¹ The Court was unmoved by a similar conclusory public interest justification offered in the original proceeding. The Court was unmoved by a similar conclusory public interest justification offered in the original proceeding. Specifically, the Commission had contended that "it is not in the public interest for GMSA carriers to protect areas where service

⁷⁹In re Application of Petroleum Communications, Inc., *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 4085, ¶ 13 (CCB 1989).

⁸⁰Even assuming a basis for a Coastal Zone, it is unclear why the territorial waters of the United States - identified by the Commission as a maritime zone that extends approximately 12 nautical miles from the U.S. baseline - constitutes an appropriate Coastal Zone. The choice of 12 nautical miles is not justified. Nor, for that matter is the size of the zone created by the coordinates specified in proposed Section 22.99.

⁸¹*Notice* at ¶ 27.

is in fact not being provided to the public simply because they had designated an area as part of a CGSA.”⁸²

In the Commission’s proposal, the rules effectively cede the “public interest” determination regarding cellular service in the coastal waters to the CTS carriers in the land-based markets adjacent to the Gulf, by giving them the sole right to deny the Gulf-based carriers the ability to place transmission facilities on land that would extend their coverage areas to the border of the GMSA. This regulatory scheme permits the land-based CTS operators to unjustly enrich themselves at the direct expense of the Gulf-based CTS operators under the guise of the “public interest.” If the Gulf-based carriers were afforded the same ability to place water coverage transmitter facilities on land without the consent of the land-based operators, just as the land-based carriers were able to extend, at will, into the GMSA without consent, then the Gulf-based operators would be more capable of effectively meeting the overriding objective of serving the “public interest” as interpreted by the Commission.

In support of its proposed creation of a Coastal Zone, the Commission relies on comments filed in this proceeding in 1992 by the predecessor of Coastel.⁸³ Over the past five years the Gulf carriers’ coverage in the area identified as the Coastal Zone has improved dramatically, thereby making it less appropriate to engage in piecemeal licensing of the Gulf. Coastel’s coverage of the so-called Coastal Zone along the Texas, Louisiana, Mississippi and

⁸²Amendment of Part 22 of the Commission’s Rules, Further Notice of Proposed Rulemaking, 6 FCC Rcd at ¶ 2.

⁸³Notice at ¶ 29 n.63.

Alabama coasts is virtually complete. On information, belief and experience, PetroCom achieves similar coverage of this area. In short, there does not appear to be any "unserved" areas, which must consist of a contiguous CGSA of at least 50 square miles pursuant to Section 22.951 of the Commission's rules, in this part of the Gulf.⁸⁴ Thus, while Coastel does not dispute that there is demand for cellular service in the areas offshore of these coasts, it is clear that there is no **unmet** demand.

A review of the current coverage provided by the Gulf carriers in the Coastal Zone reveals that the only part of the Coastal Zone that currently has significant unserved area is off the coast of Florida. The reason why this area stands in sharp contrast to the parts of the Coastal Zone that lie off the coasts of Texas, Louisiana, Mississippi and Alabama is that there are no platforms or significant land areas in that part of the GMSA. While the Commission authorized the Gulf carriers to serve the entire GMSA, it prohibited them from constructing land-based transmitter sites without the consent of the co-channel licensee in the land market. The Commission authorized particularly liberal de minimis extensions into the Gulf by the Florida land-based carriers for several years at the same time that it required the Gulf carriers to obtain the consent of the land-based carrier in order to locate a cell site on land - the only place that could sustain a cell site.⁸⁵

⁸⁴47 C.F.R. § 22.951.

⁸⁵Petroleum Communications, Inc., Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd at ¶ 17. ("under present criteria, for permissible de minimis extensions, it is likely that in the eastern Gulf, which is an area with few fixed platforms . . . larger excursions of 39 dBu contours may be acceptable under the de minimis standard.")

At the same time, the Commission tells the Gulf carriers that all they had to do was to get the cooperation of the land-based carriers in order to locate land-based cell sites. This is a naive view. After having been given an opportunity to have as many de minimis extensions into the Gulf as they desired, why would these land-based carriers consent to the placement of a cell site on land where its operation would overlap their authorized de minimis extensions into the Gulf? Gulf carriers protested many of the land-based carriers' applications proposing de minimis extensions into the Gulf. However, despite these efforts - which were intended to level the playing field - land-based carriers serving the west coast of Florida have over 4650 square miles of extensions into the Gulf. Given the Commission's failure to address the unique characteristics of this part of the Gulf, the Gulf carriers were not afforded any opportunity to have any de minimis extensions into those adjacent land markets.

To the extent the Commission perceives some degree of unmet cellular demand somewhere in the Gulf, its proposal to bifurcate the Gulf represents an exaggerated reaction. The way to address that perception is to focus on the relationships between the existing Gulf carriers and their co-channel counterparts in the adjacent MSAs and RSAs, by granting the Gulf-based carriers the same right as the land-based carriers, thereby authorizing the Gulf-based operators de minimis extensions into the land-based CGSAs without requiring consent from the land-based CTS operators. This would permit both sets of carriers to function under a set of rules that would take into consideration the unique characteristics of the Gulf and not provide an advantage to one set of carriers over another. A regulatory scheme already exists to reduce

conflict between the water-based and land-based carriers. The proposal to bifurcate the GMSA will further complicate the regulatory process for CTS in the Gulf.

The Commission should focus on tailoring the existing CTS regulatory framework to the unique characteristics of providing GMSA cellular service. The Commission should attempt to reasonably address the issues raised by the water-based GMSA cellular operators pertaining to the proposed Coastal Zone. These issues concern the placement by the Gulf CTS carriers of highly directionalized cell sites on land, a reciprocal approach to de minimis extensions between both sets of operators, as well as a more active Commission role in signal strength and frequency selection coordination between the Gulf and land-based CTS carriers. The real issue is not whether cellular service is being provided to customers in the coastal water areas of the GMSA, but whether the current regulatory process and the conduct of land-based cellular operators prevent the Gulf-based cellular operators from effectively providing service to GMSA areas that they have been properly authorized to serve.

The Gulf-based CTS licensees have been, and continue to attempt to provide reliable cellular service to the coastal areas of the GMSA. This is evidenced by the Coastel's continuing attempts to place cell sites on land close to the GMSA shoreline. The Commission has continued to deny applications by Gulf CTS carriers to place transmitters on land without the land-based carrier's consent. The Commission does not offer any reasons why it has ceded control of this process to the land based operators or why it does not take affirmative action to attempt to resolve the disputes between these operators and effectively permit the Gulf carriers

to have discrete access to locations from which they will be able to offer continuous, reliable cellular service from the coastline outward into the GMSA as was originally contemplated.

Moreover, to the extent a void in cellular service exists in some part of the GMSA, it is the result of regulatory policies that have prevented the Gulf CTS carriers from serving any such areas that do not reflect the unique characteristics of providing cellular service in the GMSA. Examples of these regulatory policies are the prohibition of land-based transmitters by the Gulf-based carriers and the failure to resolve many of the protested applications by Gulf and adjacent land CTS carriers alike, which predate current Section 22.912, where the issue is not whether a de minimis extension was permissible but rather whether the proposed extension was de minimis. These problems can be remedied without resorting to the type of draconian measures proposed by the Commission in the *Notice*.

The problems with the Commission's proposal are magnified by the fact that the Gulf-based operators were not given the same opportunity as the land-based operators to serve the proposed Coastal Zone. Gulf based operators suffered extreme financial hardship in their attempts to provide coverage to the coastal waters portion of their authorized area of operation because the unique characteristics of the Gulf made it extraordinarily difficult to find water-based locations for their cellular transmitting equipment.

Space on stationary Gulf platforms is not abundant or pervasive, compared to land-based locations for transmission sites. Land-based CTS carriers are assured any number of alternative locations within an engineered grid from which to provide cellular service to a target area. Gulf-based carriers, on the other hand, are extremely fortunate if they have a choice of locations

from which to serve a target area. It is much more common that no such choice exists. Gulf-based carriers must often face challenging and costly engineering decisions to achieve GMSA coverage. As noted, Gulf-based carriers are at the mercy of existing platforms at any given point in time. Moreover, in order to locate cellular transmission facilities on production platforms there must be, among other things, (i) available space; (ii) a willingness on the part of the platform owner to lease space to the system operator; (iii) the ability to provide reliable, cost-effective backhaul facilities for system traffic; and (iv) adequate utilities to provide continuous power to the transmitter equipment. All of these factors are under the control of the platform owner who is very aware of the lack of options available to the Gulf-based carrier. A Gulf-based CTS carrier does not have the ability to separately contract for these necessary infrastructure support services in the Gulf. These special logistical problems are not typically encountered by land-based CTS operators.

Finally, the Commission has also failed to take into consideration the extra costs incurred by Gulf carriers in the provision of their service. Gulf carriers have acknowledged that their fees are typically higher than fees charged by land-based carriers, due in part to the added costs associated with operating water-based transmitters, which are significantly more expensive to access and maintain than land-based transmitters. By shutting out Gulf carriers from the Coastal Zone, which is heavy in boating activity, the Commission would prevent the carriers from spreading their costs across the entire Gulf customer base. Under the Commission's current proposal, Gulf carriers would be limited to recovering their full equipment costs from customers in the Exclusive Zone, i.e., oil and rig companies.

In sum, the Commission has failed to fully take into account the special circumstances faced by Gulf carriers in providing their service. The Commission has also failed to provide adequate justification for its proposal.

WHEREFORE, for the foregoing reasons, the Commission should not adopt the proposals contained in its *Second Further Notice of Proposed Rulemaking* in the captioned proceeding.

Respectfully submitted,

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